

APPEAL NO. 010525

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 26, 2000. With regard to the disputed issues, the hearing officer determined that the respondent's (claimant) compensable injury of _____, was a producing cause of the claimant's hydrocephalus (HC) and that the claimant had disability from July 10, 1999, and continuing through to the CCH.

The appellant (carrier) appeals, contending that the hearing officer's decision is not supported by sufficient evidence, that the hearing officer's finding extended beyond the issues before her, and generally arguing that the carrier's medical evidence was better, or more credible, than evidence to the contrary. The carrier also raises several "Evidentiary Points." The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant was involved in an unrelated serious nonwork-related motor vehicle accident on May 16, 1999, where the claimant sustained a closed-head injury (among other injuries). Diagnostic testing indicated "abnormal hypodensities in the white matter of the frontal lobes" and some neurological deficits. Nonetheless, the claimant returned to his regular job with a private express delivery service with only minor residual problems. On _____, the claimant sustained a compensable injury when a heavy container or crate fell off a truck and struck him in the head and neck.¹ Whether the claimant lost consciousness or not is unclear, but the claimant was taken to the hospital where there was a diagnostic impression of cervical muscle strain, scalp contusion, chest wall muscle strain, and bilateral arm strain.² The claimant's initial treatment was fairly unremarkable. The claimant was first seen by Dr. B, a neurological surgeon, on July 16, 1999. By July 26, 1999, the claimant's condition began to deteriorate to include double vision and nerve palsy. The claimant was admitted to the hospital on July 28, 1999, for a brain shunt to relieve pressure on the brain. The claimant was released for rehabilitation on August 9, 1999, but readmitted with seizures on August 12, 1999. It is Dr. B's opinion that the claimant "suffered symptomatic [HC] with an associated neurologic decline" due to the _____, injury. Dr. B is supported in his opinion by Dr. L, a neurologist, who is the claimant's current treating doctor.

¹The hearing officer found it was "a very heavy object" which weighed "in excess of 200 lbs." Other medical records, correctly or not, refer to the object as weighing 1,200 to 1,500 pounds. The carrier objects to the hearing officer's finding that it weighed 200 pounds.

²The carrier objects to the hearing officer's finding that the claimant "sustained injuries to his head, neck, anterior chest wall and bilateral extremities"; however, that finding is supported by the hospital record of _____. The hearing officer did not err in defining the compensable injury.

Evidence to the contrary was testimony from Dr. R, a neurological surgeon, who performed an impairment evaluation on the claimant. Dr. R diagnosed a cervical strain, cerebral concussion, and "[b]rain disease of unknown etiology." It appears undisputed that the claimant has a severe brain injury with severe cognitive deficiencies with only the causation in dispute. Dr. R believes that the claimant does not have HC, but has multiple sclerosis (MS). At one point, in August 1999, the claimant was referred to Dr. I for a consultation. Dr. I, in several reports and progress notes, appears to indicate that the claimant's brain disease is "of uncertain etiology." Both Dr. B and Dr. L disagree that the claimant has MS and both attributed the claimant's HC to the compensable injury of _____. There was conflicting expert medical evidence. The hearing officer does a credible job in summarizing the medical evidence and we certainly are unable to say the decision is not supported by sufficient evidence or is against the great weight and preponderance of the evidence.

The carrier hinges its dispute of disability on the premise that the claimant did not sustain a compensable injury. In that we are affirming the hearing officer's decision on the extent of injury, we also affirm the decision on disability.

As to the carrier's arguments on "evidentiary points," we find no merit in the carrier's arguments that the hearing officer erred in admitting the claimant's and the carrier's written closing arguments as hearing officer exhibits, even though the carrier inadvertently included the attorney's notes with its closing argument. Nor do we find any error in the hearing officer's admission of an order appointing the claimant's wife as his legal guardian, as a hearing officer exhibit, although the hearing officer initially said she would only take official notice of that document. That document is particularly relevant given the carrier's insistence on the claimant's presence at the CCH so that he could be cross-examined.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge